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MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339			FIGUEROA, FELIX O	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/644,138
Filing Date: August 20, 2003
Appellant(s): YOEST, DANIEL T.

MAILED
MAR 15 2007
GROUP 2800

Barry E. Kaplan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 27, 2006 appealing from the Office action mailed March 31, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,484,185	Graves	11-1984
US 3,888,439	Tuttle	06-1975
US 5,573,420	Grosswendt	11-1996
US 5,211,573	Cross	05-1993
US 6,033,251	Cook	05-2000
US 5,547,390	Laherty	08-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 6, 8, 9, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves (US 4,484,185) in view of Tuttle (US 3,888,439) and Grosswendt (US 5,573,420).

Graves discloses a power cord plug securing device, comprising: a clasp member (at end 52) for removably and securely retaining a power cord therein; the clasp member comprising a trough region (between 54,56) with retaining walls (54,56) extending therefrom; the trough region disposed along a first axis of orientation; a securing strap (48) proximate from a base region underlying the trough region and disposed along an axis of orientation parallel to the first axis of orientation; the securing strap oriented for underlying the power cord plug when in use.

Graves discloses substantially the claimed invention except for the hole to receive a screw. Tuttle teaches a through-hole (30) formed through the securing strap (12), the through-hole adapted to receive a screw for removable attachment of the

device to a respective supporting part to allow connection to different mating parts. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the strap of Graves with a through-hole, as taught by Tuttle, to allow connection to different mating parts.

Graves, as modified, discloses substantially the claimed invention except for the clasp member being block-shaped; and the specific trough region. Grosswendt teaches the use of an essentially inflexible clasp block member (10/20) with a trough region comprising a truncated cylindrical bottom portion and approximately vertically disposed retaining walls, the clasp block member further comprising an open region disposed approximately opposite the cylindrical bottom portion and centrally between the retaining walls, the open region forming an elongated channel, and a securing strap (26) underlying the clasp block member. This retaining structure is an art recognized equivalent structure for the retaining structure of Graves. Therefore, because these two retaining structure were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute of the clasp block member of Grosswendt for the clasp member of Graves to allow easy removal of the clasp member from the power cord while providing a secure and stronger retention.

Regarding claim 2, Graves, as modified, discloses the clasp member being adapted to removably engage and securely retain a portion of the power cord immediately aft of the plug head when attached thereto.

Regarding claim 3, Grosswendt discloses the clasp member being substantially U-shaped (when connected to the power cord).

Regarding claim 4, Grosswendt shows (in Fig.5) retaining walls terminating in inwardly projecting ends for securely maintaining the portion of the power cord immediately aft of the plug head within a trough region.

Regarding claim 6, Graves, as modified, discloses a first end of the securing strap being integrally formed with said clasp member.

Regarding claim 8, Graves, as modified, discloses the through-hole being opposingly positioned from the clasp member on said securing strap.

Regarding claim 9, Tuttle discloses a plurality of through-holes.

Regarding claims 18 and 19, Graves, as modified by Tuttle and Grosswendt, discloses the claimed method.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graves, Tuttle and Grosswendt, and further in view of Cross (US 5,211,573).

Graves, as modified, discloses substantially the claimed invention except for ribbed or textured walls. Cross teaches the use of ribbed or textured walls (80) to provide a friction fit (col.4, lines 53-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use ribbed or textured walls, as taught by Cross, to provide a friction fit, thus improving retention.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graves, Tuttle and Grosswendt, and further in view of Laherty (US 5,547,390).

Graves, as modified, discloses substantially the claimed invention except for the integral strap and cover plate. Laherty teaches (in Fig.5) a securing member with a second end of the strap being integral with a cover plate. This arrangement reduces the

securing time between the plug and mating device. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the strap of Graves integral with a cover plate, as taught by Laherty, to reduce the securing time between the plug and mating device.

Claims 10-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 6,033,251) in view of Grosswendt.

Cook discloses a power cord plug securing device (Fig.1), comprising; a first clasp member (left side) for removably and securely retaining a first power cord (26) therein; a second clasp member (right side) for removably and securely retaining a second power cord therein; and a securing strap (34) extending proximate between a base region underlying the trough region of the first clasp member and a base region underlying the trough region of the second clasp member.

Cook discloses substantially the claimed invention except for the clasp member being block-shaped; and the specific trough region. Grosswendt teaches the use of an essentially inflexible clasp block member (10/20) with a trough region, the trough region disposed along a first axis of orientation corresponding with an axis of the power cord and comprising a truncated cylindrical bottom portion and approximately vertically disposed retaining walls, the clasp block member further comprising an open region disposed approximately opposite the cylindrical bottom portion and centrally between the retaining walls, the open region forming an elongated channel, and a securing strap (26) underlying the clasp block member, disposed along an axis of orientation parallel to the first axis of orientation and underlying the power cord plug. This retaining structure

is an art recognized equivalent structure for the retaining structure of Cook. Therefore, because these two retaining structure were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute of the clasp block member of Grosswendt for the clasp member of Cook to allow easy removal of the clasp member from the power cord while providing a secure and stronger retention and facilitate manufacturing of the securing device.

Regarding claim 11, Cook discloses the securing device adapted to maintain the first power cord in electrical engagement with the second power cord (Fig.3).

Regarding claim 12, Cook discloses a through-hole (12) formed through the securing strap, the through-hole adapted to receive an electrical outlet cover plate screw (32) for removable attachment of the device to an electrical outlet cover plate.

Regarding claim 13, Cook discloses at least one of the first and second clasp members is adapted to maintain electrical engagement of a plug head of at least one of the first and second power cords with an electrical outlet (Fig.4).

Regarding claim 14, Cook discloses the first clasp member being adapted to removably engage and securely retain a portion of the first power cord immediately aft of a plug head attached thereto, and wherein the second clasp member is adapted to removably engage and securely retain a portion of the second power cord immediately aft of a plug head attached thereto.

Regarding claim 15, Cook, as modified by Grosswendt, discloses the first and second clasp members are substantially U-shaped.

Regarding claim 16, Grosswendt shows the retaining walls terminating in inwardly projecting ends for securely maintaining the portion of the power cord immediately aft of the plug head within a trough region.

Regarding claims 18-23, Cook, as modified by Grosswendt, discloses the claimed method.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook and Grosswendt, and further in view of Cross (US 5,211,573).

Cook, as modified, discloses substantially the claimed invention except for ribbed or textured walls. Cross teaches the use of ribbed or textured walls (80) to provide a friction fit (col.4, lines 53-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use ribbed or textured walls, as taught by Cross, to provide a friction fit.

(10) Response to Argument

Claim 1:

In response to Appellant's argument (in the last paragraph of page 5) that Grosswendt fails to teach "an essentially inflexible clasp because, as is made clear at col. 4, lines 17-27 and again at col. 5, lines 23-27 of Grosswendt, connector 20 is not essentially inflexible, but is instead flexible and may be bent apart, thereby allowing a cord to pass through teeth 54 and 56 into central opening 38", please note that the fact that the connector/clasp block may be bent apart does not preclude it from being "essentially inflexible". Particularly, Grosswendt discloses that the first connector/clasp block (20) is "substantially inflexible" (col. 2, line 3-4).

In response to Appellant's argument (in the first paragraph of page 6) that Grosswendt further fails to teach "an open region disposed approximately opposite a truncated cylindrical bottom portion of a trough forming an elongate channel", please note that Grosswendt shows (in Fig. 1) an open region disposed opposite the truncated cylindrical bottom portion (at least when the cable is in the cylindrical bottom portion). As stated by Appellant (in the second full paragraph of page 6) the region of Grosswendt must be open in order to receive the cable.

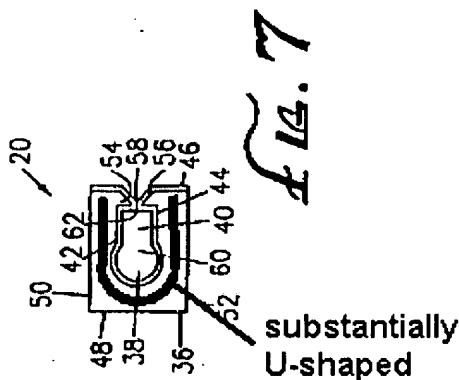
In response to Appellant's argument (in the last paragraph of page 6) that Tuttle fails to teach, "a throughhole formed through said securing strap, said throughhole adapted to receive an electrical outlet cover plate screw for removable attachment of said device to an electrical outlet cover plate, thereby maintaining electrical engagement of electrical conductors of a plug head of the power cord with an electrical outlet," please note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case, the through-hole of Tuttle is capable of receiving an electrical outlet cover plate screw.

Additionally, in response to Appellant's argument (in page 7) that Tuttle is nonanalogous art, please note that it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24

USPQ2d 1443 (Fed. Cir. 1992). In this case, Tuttle discloses a securing strap (10) with a through-hole (30) to receive a screw, and thus attach the strap to the pertinent support structure.

Claim 3:

In response to Appellant's argument that Grosswendt fails to teach "a U-shaped clasp block member since teeth 54 and 56 must be separated sufficiently by manual force perpendicular to the reference plane during insertion and removal of the cord", please note that the fact that the teeth may have to be separated does not preclude Grosswendt from showing a substantially U-shaped clasp block member. See following figure.



In response to Appellant's argument that the U-shape "goes to clarify that power cord PC may be removed from the trough region 42 without movement of retaining walls 44 and 46", please note that these features upon which Appellant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988

F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nonetheless, these features do not appear to have enough basis in the specification as originally filed.

Claim 18 (in page 8):

Appellant's has not presented any additional argument regarding claim 18, but has merely referred back to the arguments made with respect to claim 1. Therefore, the response to the arguments regarding claim 1 apply to the arguments regarding claim 18.

Claim 5:

In response to Appellant's argument (in page 9) that Cross fails to disclose "a trough region or retaining walls as required by claims 1, 2 and 4, wherein at least one of the trough region and the retaining walls are at least partially textured or ribbed for increased frictional association with the power cord", please see the following figure in which the trough region / retaining walls at least partially textured / ribbed is shown.

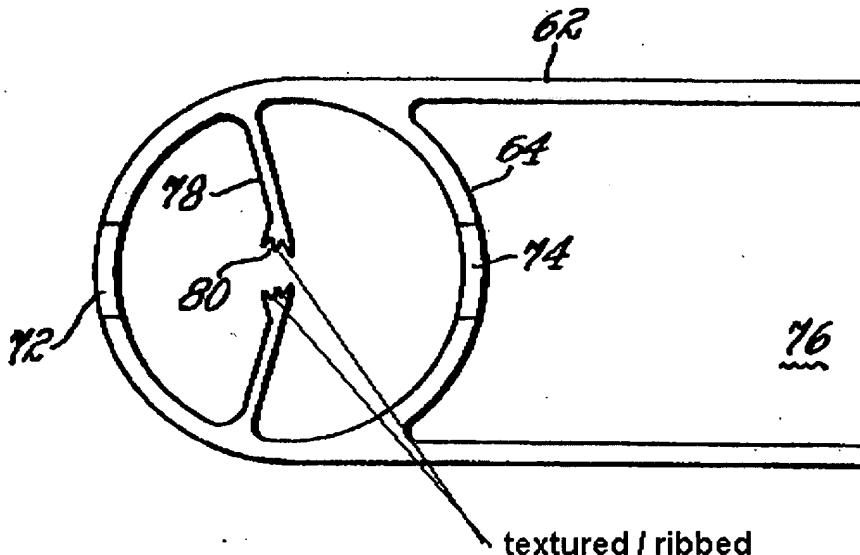


Fig. 2

In response to Appellant's argument that "[s]houlders 80 and 88 would have no effect on the cord when the tension is placed on the cord in an opposite direction (towards the other end of the device 60)", please note that this does not deny the trough region being textured / ribbed.

In response to Appellant's arguments against the references individually, i.e. that Cross fails to teach "essentially inflexible surfaces that are textured or ribbed for increased frictional association with a power cord retained therein, and instead teaches teeth disposed on the ends of pinching-type cord retention means", please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986). In this case, Grosswendt discloses the essentially inflexible surfaces. Cross teaches the use of ribbed or textured walls (80) to provide a friction fit (col.4, lines 53-55).

Claim 10:

In response to Appellant's argument (in the last paragraph of page 10) that Grosswendt fails to teach "an essentially inflexible clasp block member... because connector 20 of Grosswendt is flexible", please note that Grosswendt discloses that the first connector / clasp block (20) is "substantially inflexible" (col. 2, line 3-4).

In response to Appellant's argument that Grosswendt further fails to teach "the trough region, truncated cylindrical bottom portion, opposing open portion, and elongated channel... because teeth 54 and 56 of connector 20 of Grosswendt form a closed portion completely enclosing central opening 38", please note that Grosswendt shows (in Fig. 1) an open region disposed opposite the truncated cylindrical bottom portion (at least when the cable is in the cylindrical bottom portion).

Claim 15:

In response to Appellant's argument that Grosswendt fails to teach "a U-shaped clasp block member since teeth 54 and 56 must be separated sufficiently by manual force perpendicular to the reference plane during insertion and removal of the cord", please note that the fact that the teeth may have to be separated does not preclude Grosswendt from showing a substantially U-shaped clasp block member. See figure regarding claim 3.

In response to Appellant's argument that the U-shape "goes to clarify that power cord PC may be removed from the trough region 42 without movement of retaining walls 44 and 46", please note that these features upon which Appellant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nonetheless, these features do not appear to have enough basis in the specification as originally filed.

Claim 18 (in page 11):

Appellant's has not presented any additional argument regarding claim 18, but has merely referred back to the arguments made with respect to claim 1. Therefore, the response to the arguments regarding claim 1 apply to the arguments regarding claim 18.

Claim 17:

In response to Appellant's argument (in page 12) that Cross fails to disclose "a trough region or retaining walls as required by claims 1, 2 and 4, wherein at least one of the trough region and the retaining walls are at least partially textured or ribbed for increased frictional association with the power cord", please see the previous figure, regarding claim 5, in which the trough region / retaining walls at least partially textured / ribbed is shown.

In response to Appellant's argument that "[s]houlders 80 and 88 would have no effect on the cord when the tension is placed on the cord in an opposite direction

(towards the other end of the device 60)", please note that this does not deny the trough region being textured / ribbed.

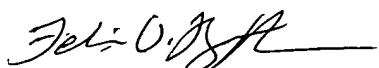
In response to Appellant's arguments against the references individually, i.e. that Cross fails to teach "essentially inflexible surfaces that are textured or ribbed for increased frictional association with a power cord retained therein, and instead teaches teeth disposed on the ends of pinching-type cord retention means", please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Grosswendt discloses the essentially inflexible surfaces. Cross teaches the use of ribbed or textured walls (80) to provide a friction fit (col.4, lines 53-55).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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